

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

CIVIL DIVISION

GARY R. MILES,)	CASE NO: 05-65E
Plaintiff,)	
)	
v.)	
)	
BIG LOTS, INC., BIG LOTS STORES,)	
INC., CONSOLIDATED STORES)	
INTERNATIONAL CORPORATION,)	
d/b/a BIG LOTS, JOUBERT, SAS (M))	
(SDN, BHD) and TOOL AND SUPPLY)	
OF NEW ENGLAND, INC.)	
Defendants.)	

AMENDED CIVIL COMPLAINT

AND NOW, this 30TH day of November, 2005, comes the Plaintiff, Gary R. Miles, by and through his attorneys, Segel & Solymosi and brings this action against Defendants above named upon a cause of action whereof the following is a statement:

1. The Plaintiff, Gary R. Miles, is an adult individual residing at 11530 East Lake Road, North East, Erie County, Pennsylvania.

2. The Defendant, Big Lots, Inc., is believed to be a corporation organized and existing under the laws of the State of Ohio and having its principal place of business at 300 Phillips Road, Columbus, Ohio and having a place of business in the Commonwealth of Pennsylvania at 4401 Buffalo Road, Erie, Erie County, Pennsylvania.

3. The Defendant, Big Lots Stores, Inc., is believed to be a corporation organized and existing under the laws of the State of Ohio and having its principal place of business at 300 Phillips Road, Columbus, Ohio and having a place of

business in the Commonwealth of Pennsylvania at 4401 Buffalo Road, Erie, Erie County, Pennsylvania.

4. The Defendant, Consolidated Stores International Corporation d/b/a Big Lots, Inc., is believed to be a corporation organized and existing under the laws of the State of Ohio and having its principal principal place of business at 300 Phillips Road, Columbus, Ohio and having a place of business in the Commonwealth of Pennsylvania at 4401 Buffalo Road, Erie, Erie County, Pennsylvania.

5. The Defendant, Joubert, SAS (M) (SDN, BHD) is believed to be a corporation organized and existing under the laws of the Nation of Malaysia and having its principal place of business at Lot 4, Kawasan Reindustrial Alor Goyah, 78000 Melakea, Malaysia.

6. The Defendant, Tool and Supply of New England, Inc., is believed to be a corporation organized and existing under the laws of the State of Delaware and having its principal principal place of business at 300 Phillips Road, Columbus, Ohio and having a place of business at P.O. Box 0591, Wilmington, Delaware.

7. At all times mentioned herein, Joubert, SAS (M) (SDN, BHD) was in the business of designing, producing, manufacturing, distributing and selling bungee cords.

8. At all times mentioned herein, Tool and Supply of New England, Inc., was in the business of selling bungee cords.

9. At all times mentioned herein, Big Lots, Inc., Big Lots Stores and/or Consolidated Stores International Corporation d/b/a Big Lots (collectively "Big Lots") operated a discount closeout store at 4401 Buffalo Road, Erie, Erie County, Pennsylvania wherein it was engaged in the business of selling various consumer goods to the general public, including but not limited to bungee cords.

10. At some time prior to November 19, 2002, Joubert, SAS (M) (SDN, BHD) manufactured and sold bungee cords to Tool and Supply of New England, Inc. or otherwise placed the bungee cords in the stream of commerce.

11. Joubert, SAS (M) (SDN, BHD) expected these bungee cords to reach consumers and users in the condition it was sold.

12. At some time prior to November 19, 2002, Tool and Supply of New England, Inc. resold the bungee cords manufactured by Joubert, SAS (M) (SDN, BHD) to Big Lots or otherwise place the bungee cords in the stream of commerce.

13. Tool and Supply of New England, Inc. expected these bungee cords to reach consumers and users in the condition it was sold.

14. On or about November 19, 2002, Plaintiff purchased a Protective Measures 12 pack assortment of bungee cords manufactured by Joubert, SAS (M) (SDN, BHD) and distributed by Tool and Supply of New England, Inc. at the closeout outlet of Big Lots located at 4401 Buffalo Road, Erie, Erie County, Pennsylvania.

15. Sometime during the last weekend of November, 2002 or first weekend of December, 2002, Plaintiff used one of the bungee cords he had purchased at Big Lots for the purpose of securing a cover to a boat which he owned.

16. As Plaintiff was in the process of securing one of the bungee cords to his boat one of the hooks on the bungee cord broke causing the cord to snap and strike Plaintiff in the right eye resulting in injuries to the eye more fully set forth below.

17. Immediately prior to the time Plaintiff sustained his injuries, the bungee cord was in the same condition existing when Joubert, SAS (M) (SDN, BHD) sold and delivered it to Tool and Supply of New England, Inc.

18. Immediately prior to the time Plaintiff sustained his injuries, the bungee cord was in the same condition existing when Tool and Supply of New England, Inc. sold and delivered it to Big Lots.

19. Immediately prior to the time Plaintiff sustained his injuries, the bungee cord was in the same condition existing when Big Lots sold and delivered it to him.

20. The bungee cord was in a defective condition unreasonably dangerous to a consumer or user in that:

- a. The wire hook of the bungee cord had been mechanically damaged during the manufacture or during packaging and therefore lacked sufficient load bearing capacity.
- b. The wire hook of the bungee cord lacked sufficient load bearing capacity.

21. As a direct result of the defective condition of the bungee cord, Plaintiff suffered the following injuries:

- a. Traumatic hyphema of the right eye.
- b. Extensive hemorrhage of the anterior chamber of the right eye.
- c. Secondary glaucoma, right eye.
- d. Corneal blood staining, right eye.
- e. Scarring of right eye.
- f. Limited vision of the right eye.
- g. Trauma.
- h. Inability to enjoy life's pleasures.
- i. Past, present and future mental anguish.
- j. Shock, fear, humiliation, anxiety, irritation, annoyance, tension and other forms of stress.

- k. Pain, suffering and inconvenience.
- l. Physical disfigurement.
- m. Inability to continue his usual activities.
- n. Impairment of his general health, strength and vitality.
- o. Mental and physical dysfunction.
- p. Loss of life's pleasures.

22. As a proximate result of the aforementioned injuries, Plaintiff has suffered and may and probably will in the future suffer great pain and suffering.

23. As a proximate result of the defective condition of the bungee cord, Plaintiff had to undergo surgical procedures and may be required to undergo an extended period of treatment including possible future surgery.

24. As a proximate result of the defective condition of the bungee cord, Plaintiff has suffered a loss of earnings and earning capacity.

25. Plaintiff has been obliged to expend large and various sums of money for medical attendance in endeavoring to cure said injuries. Plaintiff will, by reason of the aforementioned injuries, be obligated to expend further large sums.

26. As a proximate result of the impairments described, Plaintiff has suffered substantial pain, suffering, anxiety, inconvenience and mental distress from the date of the accident to the present date, all of which will continue indefinitely into the future.

27. As a result of the defective condition of the bungee cord, Plaintiff has suffered irreversible and permanent damage severely restricting all of his activities.

WHEREFORE, Plaintiff, Gary R. Miles, prays for judgment in his favor against Defendants, Big Lots, Inc., Big Lots Stores, Inc., Consolidated Stores International

Corporation d/b/a Big Lots, Joubert, SAS (M) (SDN, BHD) and Tool and Supply of New England, Inc. in an amount in excess of Thirty-Thousand (\$30,000.00) Dollars together with the costs of this suit, interest and compensatory damages.

A TRIAL BY JURY OF TWELVE IS DEMANDED.

Respectfully submitted by

SEGEL & SOLYMOSI

By: 

Tibor R. Solymosi, Esquire
Attorney for Plaintiff

818 State Street
Erie, PA 16501
Phone: (814) 454-1500
Fax: (814) 454-1502

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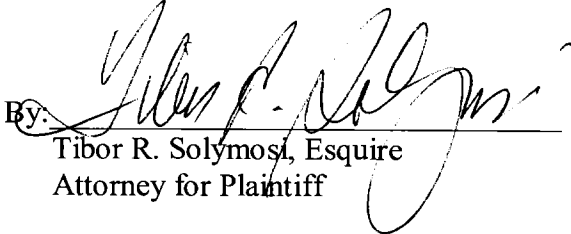
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CERTIFICATE OF SERVICE

I, Tibor R. Solymosi, Esquire, hereby certify that true and correct copies of the foregoing Amended Civil Complaint were served this _____ day of November, 2005, via first class, U.S. Mail, postage prepaid, and Certified Mail, to parties of record listed below.

SEGEL & SOLYMOSI

By: 
Tibor R. Solymosi, Esquire
Attorney for Plaintiff

Judith A. Moses, Esquire
CIPRIANI & WERNER, P.C.
650 Washington Road
Suite 700
Pittsburgh, PA 15228